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Attorneys for Defendant DROCK GAMING, LLC,

dba The D fka Fitz and/or Fitzgeralds

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RICHARD COOPER, and individual;

Plaintiff,

vs.

DROCK GAMING, LLC, dba The D fka Fitz
and/or Fitzgerald's a limited liability company;
DOES 1 through 10; and ROE Corporations 11
through 20, inclusive,

Defendants

CASE NO. 2:16-cv-02961-RFB-NJK

**DEFENDANT DROCK
GAMING, LLC'S MOTION FOR
EXCEPTION TO EARLY NEUTRAL
EVALUATION SESSION ATTENDANCE
REQUIREMENTS**

COMES NOW Defendant DROCK GAMING, LLC, dba The D fka Fitz and/or
Fitzgeralds ("Defendant") through undersigned counsel, the law firm of Dickinson Wright,
PLLC, and hereby submits this Motion for Exception to Early Neutral Evaluation Session
Attendance Requirements (the "Motion").

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1 This Motion is supported by the following Memorandum of Points and Authorities and
2 the papers and pleadings on file in this matter.

3 DATED this 7th day of February 2017.

4 DICKINSON WRIGHT PLLC

5
6 /s/ Cynthia L. Alexander

7 Cynthia L. Alexander

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11 *Attorneys for Defendant DROCK GAMING,*
12 *LLC, dba The D fka Fitz and/or Fitzgeralds*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. Introduction**

15 On January 11, 2017, this matter was assigned to the Early Neutral Evaluation (“ENE”)
16 Program. The ENE session is scheduled for March 17, 2017 in the chambers of U.S. Magistrate
17 Judge Peggy A. Leen. The purpose of this Motion is to seek approval of the Court for the
18 insurance carrier to appear at the ENE session telephonically. Plaintiff’s counsel has indicated
19 that he will not oppose this Motion.
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21 **II. Argument**

22 Pursuant to the Order Scheduling Early Neutral Evaluation Session issued by this Court
23 on January 11, 2017 (the “Order”), “[i]n the case of non-individual parties, counsel shall arrange
24 for a representative with binding authority to settle this matter up to the full amount of the claim
25 to be present for the duration of the ENE session.” [Dkt. No. 11]. Additionally, pursuant to the
26 Order, “[i]f any party is subject to coverage by an insurance carrier, then a representative of the
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1 insurance carrier with authority to settle this matter up to the full amount of the claim must also
2 be present for the duration of the ENE session.” *[Id.]*

3 The claims in Plaintiff’s Complaint are subject to an insurance policy, which has a
4 substantial retention amount that is the responsibility of Defendant. This retention amount must
5 be exhausted before the insurance policy can be utilized. A representative of Defendant will
6 attend the ENE session in person and have full authority for the retention amount. The
7 insurance representative assigned to this matter works and resides out of state. In order to attend
8 the ENE in person, the insurance representative would have to expend additional time and travel
9 costs. In order to avoid these expenses, Defendant requests that the insurance representative be
10 permitted to attend the ENE telephonically. The insurance representative will be able to
11 participate in the entire ENE via telephone and will have appropriate settlement authority
12 relating to the insurance policy.
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15 Counsel for Defendant has contacted Plaintiff’s counsel regarding its request to have the
16 insurance representative appear telephonically. Plaintiff’s counsel has indicated that he is has no
17 opposition to the insurance representative appearing telephonically.

18 If the Court grants this Motion, it will not hinder the ENE session in any way. First, a
19 representative of Defendant with full authority as to the retention amount will be present at the
20 ENE session. Second, the insurance representative will actively be participating in the ENE
21 session telephonically. As such, the parties will have all of the authority necessary to participate
22 in a good faith settlement discussion. Finally, counsel for Plaintiff has no objection to the
23 telephonic appearance.
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1 **III. Conclusion**

2 Defendant respectfully requests that this Court allow the insurance representative to
3 appear at the March 17, 2017 ENE session telephonically.
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5 DATED this 7th day of February 2017.
6

7 DICKINSON WRIGHT PLLC

8 /s/ Cynthia L. Alexander

9 Cynthia L. Alexander

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16 *Attorneys for Defendant DROCK GAMING,*
17 *LLC, dba The D fka Fitz and/or Fitzgeralds*

18 IT IS ORDERED that Defendant's insurance representative shall be available
19 telephonically for the duration of the ENE session.

20 Dated this 8th day of February, 2017.

21 *Peggy A. Leen*

22 Peggy A. Leen

23 United States Magistrate Judge
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CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 7th day of February 2017, she served a copy of the foregoing **DEFENDANT DROCK GAMING, LLC'S MOTION FOR EXCEPTION TO EARLY NEUTRAL EVALUATION SESSION ATTENDANCE REQUIREMENTS** by filing through electronic service to all interested parties, through the Court's **ECF** system addressed to:

Christian Gabroy (#8805)
Gabroy Law Offices
The District at Green Valley Ranch
170 South Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorney for Plaintiff

s/ Angelica V. Jimenez
An employee of Dickinson Wright PLLC